

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval of a Commercial and)
Industrial Direct Load Control)
Program, and Recovery of Program)
Costs.)
_____)

DOCKET NO. 03-0415

DECISION AND ORDER NO. 22587

Filed June 30, 2006
At 11 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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DEPT. OF COMMERCE AND
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STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

for
Charles P. Luasopa

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Docket No. 03-0415
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DECISION AND ORDER

By this Decision and Order, the commission approves the request of HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") to: 1) increase the equipment budget for 2006 by \$148,400; and 2) amend the liability and indemnification provision of its Commercial and Industrial Direct Load Control ("CIDLC") Program Contract.

I.

Introduction

By Decision and Order No. 21421, filed on October 19, 2004, the commission approved HECO's requests for: (1) approval of the CIDLC Program; (2) recovery of its program costs for the first five years of the program, which are estimated to be approximately \$5,481,460 (and associated revenue taxes, if applicable), using HECO's Integrated Resource Plan ("IRP") Cost Recovery Provision and incorporated into rates as a result of the next rate case if Demand Side Management ("DSM") costs are not recovered through the IRP Cost Recovery Provision after the

next rate case; (3) its standard CIDLC Program Contract for use with participating customers; and (4) program flexibility as described within the application filed in this docket.

On April 8, 2005, the commission approved HECO's latest version of its CIDLC Program Contract, as amended to correct for certain minor omissions.¹

On March 30, 2006, HECO requested approval to increase its 2006 equipment budget by \$148,400 to reflect projected expenditures for the year.² Additionally, on April 10, 2006, HECO requested approval to modify the liability and indemnification provision in the CIDLC Program Contract.³

II.

Discussion

A.

Increased 2006 Budget

HECO advises that the additional \$148,400 will provide funding to allow it to continue to acquire controllable peak load and achieve the goal in 2006 of 5.1 megawatts ("MW"). HECO notes

¹See Decision and Order No. 21726, filed on April 8, 2005.

²Letter from William A. Bonnet, Vice President Government and Community Affairs, HECO (Mar. 30, 2006) ("March 30, 2006 Letter"). HECO provided copies of its March 30, 2006 Letter to the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). The commission has not received an objection to HECO's requests to increase its budget and to amend its CIDLC Program Contract from the Consumer Advocate.

³Letter from William A. Bonnet, Vice President Government and Community Affairs, HECO (Apr. 10, 2006) ("April 10, 2006 Letter"). HECO provided copies of its April 10, 2006 Letter to the Consumer Advocate.

that the CIDLC Program is one of the load reduction measures that is crucial to help mitigate the reserve capacity shortfall explained in its Adequacy of Supply Report, filed on March 6, 2006.

Based upon a review of the record, as supplemented by HECO's March 30, 2006 Letter, the commission finds that HECO's request to increase its budget by \$148,400 is reasonable and in the public interest. Accordingly, the commission concludes that HECO's request to increase its budget to reflect its projected expenditures should be approved.

B.

Amended CIDLC Program Contract

HECO proposes to modify its CIDLC Program Contract liability and indemnification provision (clause number 8) by creating two versions to address the concerns raised by federal government customers and all other non-federal government customers. With respect to its federal government customers, HECO proposes to modify the provision to ensure its consistency with the Anti-Deficiency Act and the Federal Tort Claims Act ("FTCA"). HECO proposes to modify its liability and indemnification provision for non-federal government customers to provide that customers are not responsible for indemnifying HECO for liability resulting from HECO's gross negligence or willful misconduct.

HECO advises that it has pending for execution two CIDLC Program contracts with federal government customers for

4.9 MW of controllable load. The U.S. Navy has expressed concerns to HECO that its current liability and indemnification language is "(1) susceptible of being interpreted as binding the Federal Government to a 'contingent liability' beyond the scope of the Anti-Deficiency Act, and/or (2) creates an ambiguity in terms of not clearly stating that the FTCA is the appropriate mechanism through which cases sounding in tort should be brought against the Federal Government."⁴

Non-federal government customers have expressed hesitation about enrolling in the CIDLC Program, citing concerns with the existing liability and indemnification provision.

Upon review of the record, the commission finds the two versions of the liability and indemnification provision reasonable and in the public interest, and concludes that HECO's request to amend the CIDLC Program Contract should be approved.

III.

Orders

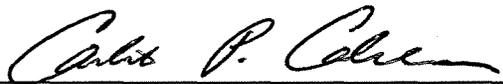
THE COMMISSION ORDERS:

1. HECO's request to increase its 2006 CIDLC Program budget by \$148,400 is granted.
2. HECO's CIDLC Program Contract, as amended to include the two versions of the liability and indemnification provision provided with the April 10, 2006 Letter, is approved.

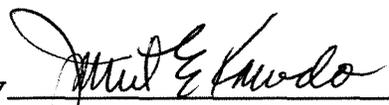
⁴April 10, 2006 Letter at 2.

DONE at Honolulu, Hawaii JUN 30 2006.

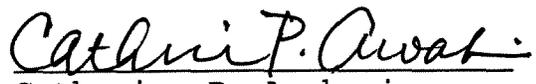
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

03-0415.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22587 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: JUN 30 2006